

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ELIJAH L. PALMER, et al.,

Case No. 2:20-cv-00250-RFB-VCF

Plaintiff,

## ORDER

v.

LAS VEGAS METROPOLITAN  
POLICE DEPARTMENT, et al.,

## Defendants.

On February 3, 2020, plaintiffs Elijah L. Palmer, Robert Alan Roginsky, Kevin Sunseri, Albert Moyle, Brian Ford, Timothy Sledge, Jeff Kerr, Matt Frazier, Richard Feverborn, and Jose Garcia submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 that was signed by all ten plaintiffs. (ECF No. 1-1). Plaintiff Elijah Palmer filed an incomplete application to proceed *in forma pauperis*. (ECF No. 1). None of the other plaintiffs has filed an application to proceed *in forma pauperis* or paid a filing fee.

## I. JOINDER OF PLAINTIFFS

A person may be permissibly joined as a plaintiff under Rule 20 if (1) he or she asserts “any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences” and (2) “any question of law or fact common to all plaintiffs will arise in the action.” Fed. R. Civ. P. 20(a); *Rush v. Sport Chalet, Inc.*, 779 F.3d 973, 974 (9th Cir. 2015). However, under Rule 21, “the court may at any time, on just terms, add or drop a party” and “may also sever any claim against a party.” Thus, even where the requirements of Rule 20 are met,

1 a district court should also consider whether permissive joinder of plaintiffs would comport  
2 with principles of judicial economy and further fundamental fairness and whether joinder  
3 would result in prejudice to either side. *Visendi v. Bank of America, N.A.*, 733 F.3d 863,  
4 870 (9th Cir. 2013); *Coughlin v. Rogers*, 130 F.3d 1348, 1351 (9th Cir. 1997) (“Rule 20 is  
5 designed to promote judicial economy, and reduce inconvenience, delay, and added  
6 expense.”); *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1296 (9th Cir. 2000) (holding  
7 that, even once Rule 20 requirements are met, a district court must examine whether  
8 joinder would comport with principles of fundamental fairness or would result in prejudice  
9 to any party). see also *Harmon v. Brown*, 2018 WL 6243246, at \*1 (S.D. Cal. Nov. 29,  
10 2018) (“Even if the standard for permissive joinder under Rule 20(a) is satisfied, district  
11 courts have the discretion to refuse joinder in the interests of avoiding prejudice and  
12 delay, ensuring judicial economy, or safeguarding principles of fundamental fairness.”).  
13 Courts have broad discretion regarding severance. See *Coleman*, 232 F.3d at 1297.  
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15 Here, although the claims all appear to involve conditions of confinement, there  
16 are likely to be some different questions of law and fact applying to the various plaintiffs.  
17 See *Coughlin*, 130 F.3d at 1351 (recognizing that all of plaintiffs’ claims would be brought  
18 under same laws, but that did not necessarily establish a common question of law or fact  
19 , and the court still would have to give each claim individualized attention because each  
20 plaintiff’s claim was discrete and involved different issues). That is partly because it  
21 appears that not all plaintiffs were subject to all of the same conditions and also because  
22 it is apparent from the complaint that the plaintiffs were in the holding cells for different  
23 periods of time. (See, e.g., ECF No. 1-1 at 2-4, 8, 9). The amount of time to which a  
24 plaintiff is subjected to a condition of confinement is a significant factor in determining  
25 whether the condition violated that plaintiff’s constitutional rights. See *Hearns v. Terhune*,  
26 413 F.3d 1036, 1042 (9th Cir. 2005). It is difficult to assess whether all the plaintiffs’  
27 claims in this case arise out of the same transaction, occurrence, or series of transactions  
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1 or occurrence and common issue of fact. However, the Court will assume that there is at  
2 least one common question of fact arising out of a series of occurrences.  
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4 Nevertheless, even assuming that plaintiffs here meet the requirements of Rule  
5 20(a), in this case, the Court still would not permit joinder of plaintiffs' claims in one  
6 complaint. It appears that joinder of the plaintiffs' claims would not promote fairness and  
7 judicial economy or reduce inconvenience and delay. Rather, joinder would do the  
8 opposite. Plaintiffs are not attorneys and therefore no plaintiff would be permitted to  
9 represent other plaintiffs. *Pro se* litigants have the right to plead and conduct their own  
10 cases personally. See 28 U.S.C. § 1654. However, *pro se* litigants have no authority to  
11 represent anyone other than themselves. See *Cato v. United States*, 70 F.3d 1103, 1105  
12 n.1 (9th Cir. 1995); *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir.  
13 1987). Under Rule 11(a) of the Federal Rules of Civil Procedure, each plaintiff would be  
14 required to sign every filing in this case. It appears that all the plaintiffs were in the custody  
15 of the Clark County Detention Center ("CCDC") at the time the complaint was filed. (ECF  
16 No. 1-1 at 3). As is indicated in the complaint, CCDC contains multiple towers and  
17 numerous units. (ECF No. 1-1 at 4, 6). That alone would make it difficult for all the  
18 plaintiffs to confer and agree on every filing and sign every filing and do so in a timely  
19 manner. To further compound this problem, it is extremely likely that many of the plaintiffs  
20 would be released from custody or transferred to various state prisons and camps  
21 throughout Nevada with varying security and communication systems. It is very unlikely  
22 that all of the prisoners would be in the same location for the duration of the litigation.  
23 Such a situation almost certainly would result in delay, confusion, inconvenience, and  
24 judicial inefficiency. It also might very well result in unfairness to at least some of the  
25 plaintiffs. As courts have recognized, in such circumstances it is appropriate not to permit  
26 joinder by multiple prisoner plaintiffs in one action. See *Lewis v. Nevada*, No. 3:13-CV-  
27 00312-MMD, 2014 WL 65799, at \*3–4 (D. Nev. Jan. 7, 2014); *Carter v. Foulk*, No. C 08-  
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1 02795 SBA (PR), 2009 WL 839105, at \*3 (N.D. Cal. Mar. 30, 2009); *Davis v. United*  
2 *States*, 2007 WL 2225791 (E.D. Cal. July 31, 2007).

3 Therefore, to prevent such problems, the Court will permit plaintiff Palmer to  
4 proceed in this action but will sever from this action all the claims by plaintiffs Robert Alan  
5 Roginsky, Kevin Sunseri, Albert Moyle, Brian Ford, Timothy Sledge, Jeff Kerr, Matt  
6 Frazier, Richard Feverborn, and Jose Garcia. Each plaintiff will have his own action and  
7 will be required to file an amended complaint that includes only allegations that relate  
8 specifically to violations of that particular plaintiff's constitutional rights.

9 Plaintiffs are advised that, pursuant to Fed.R.Civ.P. 8(a), a complaint shall include  
10 "(1) a short and plain statement of the grounds upon which the court's jurisdiction depends  
11 ...., (2) a short and plain statement of the claim showing that the pleader is entitled to relief;  
12 and (3) a demand for judgment for the relief the pleader seeks." "Each averment of a  
13 pleading shall be simple, concise and direct." Fed.R.Civ.P. 8(e). A district court has the  
14 power to dismiss a complaint when a plaintiff fails to comply with Federal Rules of Civil  
15 Procedure 8(a) and 8(e). *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996); *Nevijel*  
16 *v. North Coast Life Ins. Co.*, 651 F.2d 671, 673 (9th Cir. 1981). If the factual elements of  
17 a cause of action are not organized into a short and plain statement of the particular claim,  
18 dismissal for failure to satisfy Rule 8(a) is proper. *Sparling v. Hoffman Constr. Co.*, 864  
19 F.2d 635, 640 (9th Cir.1988); *see also*, *Nevijel*, 651 F.2d at 674. In addition, in  
20 accordance with Rule 8, a plaintiff may not allege facts that are extraneous and not part  
21 of the factual basis for his particular constitutional claims that he includes in the complaint.  
22 See *Knapp v. Hogan*, 738 F.3d 1106, 1109 (9th Cir. 2013) (recognizing that Rule 8 can  
23 be violated when the plaintiff says too much). In order to state a claim against a named  
24 defendant, a plaintiff must allege facts about that defendant and identify how that  
25 defendant's conduct violated the plaintiff's particular constitutional right. General,  
26 conclusory, and vague allegations are insufficient, and a formulaic recitation of the  
27 elements of a cause of action is insufficient. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

1 Furthermore, unrelated claims that involve different defendants must be brought in  
2 separate lawsuits. See *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). Claims may  
3 not be brought in the same case merely because all the claims are based on events that  
4 happened at the same prison or jail.

5 In order to assist the plaintiffs in drafting amended complaints, the Court will  
6 provide them with legal standards that may possibly be relevant to their claims. Plaintiffs  
7 need not and should not allege law or conclusions in their amended complaints. Instead,  
8 they should use these legal standards as guidelines for determining which particular true  
9 facts they must allege for which constitutional claims and against which defendants. They  
10 also should use the legal standards to help them determine whether they even are able  
11 to allege true facts sufficient to state a particular claim.

12 **A. Conditions of Confinement**

13 Plaintiff should note that a pretrial detainee is protected from conditions  
14 constituting punishment under the Due Process Clause of the Fourteenth Amendment,  
15 while convicted prisoners who are serving their sentences are protected by the Eighth  
16 Amendment's Cruel and Unusual Punishment Clause. *Bell v. Wolfish*, 441 U.S. 520, 535  
17 n. 16 (1971). It is very likely that majority of the plaintiffs were pre-trial detainees at the  
18 time of the alleged events and that the Fourteenth Amendment, not the Eighth  
19 Amendment, would be the applicable law.

20 For a pre-trial detainee to state a colorable Fourteenth Amendment conditions of  
21 confinement claim, the plaintiff must allege facts sufficient to show:

22 (1) The defendant made an intentional decision with respect to the conditions under  
23 which the plaintiff was confined;

24 (2) Those conditions put the plaintiff at substantial risk of suffering serious harm;

25 (3) The defendant did not take reasonable available measures to abate that risk, even  
26 though a reasonable officer in the circumstances would have appreciated the high degree  
27 of risk involved—making the consequences of the defendant's conduct obvious; and

28 (4) By not taking such measures, the defendant caused the plaintiff's injuries.

*Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016) (en banc).

As the Court mentioned above, an assessment of the severity of the condition will depend, in part, on how long the plaintiff was subjected to the particular condition. Therefore, for each condition, the plaintiff must not only allege facts sufficient to explain the condition but must also allege facts sufficient to show how long he was exposed to the particular condition. Plaintiffs are advised that failure to allege such facts may result in the dismissal of a plaintiff's claims. Merely alleging how long the person was in a booking cell may not be sufficient to adequately allege how long the plaintiff was subjected to a particular condition.

Furthermore, a defendant is liable under 42 U.S.C. § 1983 “only upon a showing of personal participation by the defendant.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). “Because vicarious liability is inapplicable to *Bivens* and § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official’s own individual actions, has violated the Constitution.” *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009). This means that Joseph Lombardo may not be held liable merely because he is the sheriff and is generally responsible for his employees or has certain general broad job responsibilities such as creating policies. Rather, if a plaintiff wishes to state a claim against Sheriff Lombardo, the plaintiff must allege facts sufficient to show that Sheriff Lombardo himself violated the plaintiff’s constitutional rights. Therefore, if a plaintiff seeks to state a due process claim against Sheriff Lombardo, the plaintiff must allege true facts sufficient to meet the legal standard established in *Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016) (en banc).

## **B. Municipal Liability**

It appears from the complaint that plaintiffs wish to rely on a theory of municipal liability to hold Clark County and the Las Vegas Metropolitan Police Department (LVMPD) liable.<sup>1</sup> A public agency is not a person or entity subject to suit unless that agency is a

<sup>1</sup> Plaintiffs are advised that the “CCDC is an inanimate building, not a person or entity subject to liability. The law defines persons as including natural persons (i.e., human beings) as well as corporations and political subdivisions. However, objects such as buildings do not fit within this definition. Therefore CCDC,

1 separate legal entity. *Hervey v. Estes*, 65 F.3d 784, 791–92 (9th Cir. 1995). Pursuant to  
2 Federal Rule of Civil Procedure 17(b), the Ninth Circuit has held that state law determines  
3 the issue of whether a department of a municipality may sue or be sued. See, e.g., *Streit*  
4 v. *County of Los Angeles*, 236 F.3d 552, 565 (9th Cir. 2001). In Nevada, each city and  
5 county are political subdivisions of the state and independent legal entities, which means  
6 each city and county can sue or be sued. *Clark County v. Lewis*, 498 P.2d 363, 365 (Nev.  
7 1972); NRS 41.031(2). The LVMPD is a political subdivision of the state and may sue or  
8 be sued in its own name. See NRS 280.280(4).

9 However, to state a colorable claim against Clark County or the LVMPD, a plaintiff  
10 must adequately allege a theory of municipal liability. A municipality may not be held  
11 liable under § 1983 on a *respondeat superior* theory, which means that a municipality  
12 may not be held liable merely because its employees have violated someone's civil rights.  
13 *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 690-91 (1978).  
14 Municipalities may not be held liable under § 1983 unless action pursuant to municipal  
15 custom or policy caused a constitutional tort. *Id.* There must be a deliberate custom or  
16 policy and that custom or policy must cause the alleged constitutional violation. *Castro*  
17 v. *County of Los Angeles*, 833 F.3d 1060, 1075 (9th Cir. 2016). Furthermore, the plaintiff  
18 must also show that the custom or policy was adhered to with deliberate indifference to  
19 the prisoners' constitutional rights. *Id.* at 1076. The deliberate indifference standard for  
20 municipalities is an objective inquiry into whether the facts available to the municipal  
21 policymakers put them on constructive notice that the particular conduct or omission is  
22 substantially certain to result in the violation of constitutional rights. *Id.*

23 Merely including a conclusory allegation that there is a custom or policy is not  
24 sufficient. *Ashcroft v. Iqbal*, 556 U.S. 662, 680–81 (2009). For example, a plaintiff must  
25 go beyond bare assertions and plead facts sufficient to show that there is a policy, what  
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28 a building, is not subject to liability." *Allen v. Clark Cnty. Det. Ctr.*, 2:10-CV-00857-RLH, 2011 WL 197201,  
\*4 (D. Nev. Jan. 20, 2011).

1 the policy is, and what role a defendant played in designing, adopting, and implementing  
2 the policy. *Id.* at 678-81.

3 In order to adequately allege a custom, a plaintiff must allege facts sufficient to  
4 show a longstanding practice or custom that constitutes the standard operating  
5 procedure of the local government entity. See *Trevino v. Gates*, 99 F.3d 911, 918 (9th  
6 Cir. 1996). “The custom must be so ‘persistent and widespread’ that it constitutes a  
7 permanent and well settled city policy.” *Id.* (quoting *Monell*, 436 U.S. at 691). “Liability for  
8 improper custom may not be predicated on isolated or sporadic incidents; it must be  
9 founded upon practices of sufficient duration, frequency and consistency that the conduct  
10 has become a traditional method of carrying out policy.” *Id.*

11 **II. FILING FEES**

12 Plaintiff Elijah Palmer has filed an application to proceed *in forma pauperis* that is  
13 incomplete. Pursuant to 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, a plaintiff who  
14 does not pay the filing fee must complete an application to proceed *in forma pauperis* and  
15 attach both an inmate account statement for the past six months and a properly executed  
16 financial certificate. Plaintiff has not submitted a properly executed financial certificate or  
17 an inmate account statement. (See ECF No. 1). Therefore, the *in forma pauperis*  
18 application is denied without prejudice. Plaintiff Elijah Palmer will be granted an  
19 opportunity to cure the deficiencies of his application to proceed *in forma pauperis*, or in  
20 the alternative, pay the full filing fee for this action. If he chooses to file a new application  
21 to proceed *in forma pauperis*, within 30 days of the date of this order, he must file a fully  
22 complete application to proceed *in forma pauperis* with the required financial documents.

23 Plaintiffs Robert Alan Roginsky, Kevin Sunseri, Albert Moyle, Brian Ford, Timothy  
24 Sledge, Jeff Kerr, Matt Frazier, Richard Feverborn, and Jose Garcia have not paid the  
25 filing fee or filed an application to proceed *in forma pauperis*. These plaintiffs each will  
26 be granted an opportunity to file an application to proceed *in forma pauperis*, or in the  
27 alternative, pay the full filing fee for this action. If a plaintiff chooses to file an application

1 to proceed *in forma pauperis* he must file a fully complete application to proceed *in forma*  
2 pauperis including both an inmate account statement for the past six months and a  
3 properly executed financial certificate. Each plaintiff is required to file a complete  
4 application with the required financial attachments within 30 days of the date of this order.

5 If any plaintiff fails to either pay the complete filing fee or file a complete application  
6 to proceed *in forma pauperis*, including the required financial attachments, within 30 days  
7 of the date of this order, the action by that plaintiff will be dismissed without prejudice to  
8 that plaintiff later filing an action in a new case with a new complaint and providing the  
9 proper payment or *in forma pauperis* application.

10 **III. CONCLUSION**

11 For the foregoing reasons, it is ordered that plaintiff Elijah L. Palmer shall proceed  
12 as the sole plaintiff in Case No. 2:20-cv-00250-RFB-VCF. The claims by Robert Alan  
13 Roginsky, Kevin Sunseri, Albert Moyle, Brian Ford, Timothy Sledge, Jeff Kerr, Matt  
14 Frazier, Richard Feverborn, and Jose Garcia are severed into separate actions for each  
15 of these plaintiffs.

16 It is further ordered that the Clerk of the Court must administratively open a new  
17 case for each of the following plaintiffs: Robert Alan Roginsky, Kevin Sunseri, Albert  
18 Moyle, Brian Ford, Timothy Sledge, Jeff Kerr, Matt Frazier, Richard Feverborn, and Jose  
19 Garcia. Only one plaintiff shall be docketed in each case.

20 It is further ordered that the Clerk of the Court shall file and docket this order and  
21 a copy of the complaint (ECF No. 1-1) in each new case.

22 It is further ordered that the Clerk of the Court shall enter a court-generated notice  
23 of related cases in each of the ten cases. See LR 42-1.

24 It is further ordered that, within 30 days of the date of this order, each plaintiff must  
25 file an amended complaint limiting the allegations and claims to those that apply to him.  
26 Each plaintiff must place his own assigned case number on his amended complaint. The  
27 plaintiff should file the amended complaint on this Court's approved prisoner civil rights  
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1 form and he must write the words "First Amended" above the words "Civil Rights  
2 Complaint" in the caption.

3 It is further ordered that, if any plaintiff fails to file an amended complaint within 30  
4 days of this order, that plaintiff's action will be dismissed without prejudice to that plaintiff  
5 later filing a new action with a new complaint.

6 It is further ordered that Plaintiff Elijah Palmer's application to proceed *in forma*  
7 *pauperis* (ECF No. 1) is denied without prejudice to filing a new application within 30 days  
8 of the date of this order.

9 It is further ordered that, within 30 days of the date of this order, each plaintiff is  
10 required to either pay the filing fee or file a complete application to proceed *in forma*  
11 *pauperis*, including both an inmate account statement for the past six months and a  
12 properly executed financial certificate.

13 It is further ordered that, if any plaintiff fails to either pay the complete filing fee or  
14 file a complete application to proceed *in forma pauperis*, including the required financial  
15 attachments, within 30 days of the date of this order, the action by that plaintiff will be  
16 dismissed without prejudice to that plaintiff later filing an action in a new case with a new  
17 complaint and either paying the filing fee or filing a complete application to proceed *in*  
18 *forma pauperis* with the required financial documents.

19 It is further ordered that the Clerk of the Court shall send each plaintiff an advisory  
20 letter with the particular plaintiff's new case name and number, a copy of the complaint,  
21 a copy of this order, the approved form for filing a § 1983 complaint with instructions, and  
22 the approved form application to proceed *in forma pauperis* by a prisoner with  
23 instructions.

24 DATED THIS 13th day of February 2020.

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27 UNITED STATES MAGISTRATE JUDGE  
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